



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA-R05-OAR-2022-0008; FRL-9609-01-R5]**

**Air Plan Approval; Wisconsin; Redesignation of the revised Door County (partial) area to Attainment of the 2015 Ozone NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to find that the revised Door County (partial) nonattainment area in Wisconsin is attaining the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard) and to act in accordance with a request from the Wisconsin Department of Natural Resources (WDNR) to redesignate the area to attainment of the 2015 ozone NAAQS, because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). Wisconsin submitted this request on January 5, 2022. EPA is also proposing to approve, as a revision to the Wisconsin State Implementation Plan (SIP), the emissions inventory for the area and the State's plan for maintaining the 2015 ozone NAAQS through 2035 in the area. Finally, EPA is proposing to approve Wisconsin's 2030 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) Motor Vehicle Emission Budgets (budgets) for this area and initiating the adequacy review process for these budgets.

**DATES:** Comments must be received on or before **[INSERT DATE 30**

**DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] .**

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0008 at <https://www.regulations.gov> or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,  
(312) 886-6832, *Liljegren.Jennifer@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is EPA proposing?
- II. What is the background for these actions?
- III. What are the criteria for redesignation?
- IV. What is EPA’s analysis of Wisconsin’s redesignation request?
  - A. Has the area attained the 2015 ozone NAAQS?
  - B. Has Wisconsin met all applicable requirements of section 110 and part D of the CAA for the area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?
  - C. Are the air quality improvements in the area due to permanent and enforceable emission reductions?
  - D. Does Wisconsin have a fully approvable ozone maintenance plan for the area?
- V. Has the state adopted approvable motor vehicle emission budgets?
- VI. Proposed actions.
- VII. Statutory and executive order reviews.

**I. What is EPA proposing?**

EPA is proposing to determine that the revised Door County (partial) nonattainment area in Wisconsin (the area) is attaining the 2015 ozone NAAQS, based on quality-assured and early<sup>1</sup> certified monitoring data for 2019-2021, and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the area from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Wisconsin SIP, the emissions

---

<sup>1</sup> Annual monitoring data is typically certified by May 1 of the following year. In this case Wisconsin has early-certified the 2021 ozone data for the area prior to the May 1, 2022, deadline.

inventory for this area and the State's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the area. The maintenance plan is designed to keep the area in attainment of the 2015 ozone NAAQS through 2035. Finally, EPA is proposing to approve the newly-established 2030 and 2035 budgets for the area.

## **II. What is the background for these actions?**

Ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised health-based 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. This portion of the area was designated as a Marginal nonattainment area and as a Rural Transport Area (RTA)<sup>2</sup> for the 2015 ozone NAAQS on June 14, 2021 (86 FR 31438, effective July

---

<sup>2</sup> EPA designated the area as a Rural Transport Area (RTA), which means EPA determined that the NO<sub>x</sub> and VOC emissions from sources within the area do not make a significant contribution to ozone concentrations in the area itself or in other areas.

14, 2021) based on 2014-2016 data.<sup>3</sup> EPA is also proposing approval of the emission inventory and the motor vehicle emissions budgets (budgets) for the area.

### **III. What are the criteria for redesignation?**

Section 107(d) (3) (E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) the Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

---

<sup>3</sup> On December 22, 2017, EPA announced an anticipated 2015 ozone NAAQS nonattainment area designation for the portion of Door County Wisconsin north of the Sturgeon Bay Canal (including Newport State Park). On June 4, 2018 (83 FR 25776) (effective August 3, 2018), EPA, consistent with information provided by Wisconsin, finalized designation of a smaller than anticipated nonattainment area limited only to the Newport State Park boundary. On June 10, 2020 (85 FR 35377), based on the area's satisfaction of CAA requirements, EPA finalized redesignation to attainment for the Newport State Park area. On June 14, 2021 (86 FR 31438, effective July 14, 2021) as part of its review of certain area designations for the 2015 ozone standards in response to a July 2020, remand issued by the D.C. Circuit Court of Appeals (the D.C. Circuit), EPA designated as nonattainment of the 2015 ozone NAAQS the portion of Door County north of the Sturgeon Bay canal (excluding the recently redesignated Newport State Park). This portion of Door County north of the Sturgeon Bay Canal (excluding Newport State Park) is known as the "Revised Door County" nonattainment area (or area) and is the subject of this redesignation proposal notice.

**IV. What is EPA's analysis of Wisconsin's redesignation request?**

*A. Has the area attained the 2015 ozone NAAQS?*

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.19 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the 2015 ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days within the ozone monitoring seasons,<sup>4</sup> on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data for

---

<sup>4</sup> The ozone season is defined by state in 40 CFR 58 appendix D. The ozone season for Wisconsin is March 1-October 15. See 80 FR 65292, 65466-67 (October 26, 2015).

the 2019-2021 period. These data have been quality assured, are recorded in the AQS, and have been early certified. These data demonstrate that the area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentration and the 3-year average of these concentrations (monitoring site ozone design value) for the area monitoring site are summarized in Table 1.

**Table 1. Annual fourth high daily maximum 8-hour ozone concentration and 3-year average of the fourth high daily maximum 8-hour ozone concentrations for the area.**

County	Monitor	Year	% Observed	Fourth high (ppm)	2019-2021 average (ppm)
Door	55-029-0004	2019	97	0.066	0.070
		2020	98	0.075	
		2021	99	0.070	

The area's 3-year ozone design value for 2019-2021 is 0.070 ppm, which meets the 2015 ozone NAAQS. Therefore, in this action, EPA proposes to determine that the area is attaining the 2015 ozone NAAQS.

EPA will not take final action to determine that the area is attaining the NAAQS nor to approve the redesignation of this area if the design value of the monitoring site in the area violates the NAAQS prior to final approval of the redesignation. As discussed in section IV.D.3. below, Wisconsin has committed to continue monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

*B. Has Wisconsin met all applicable requirements of section 110 and part D of the CAA for the area, and does Wisconsin have a fully approved SIP for the area under section 110(k) of the CAA?*

For redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (see section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (see section 107(d)(3)(E)(ii) of the CAA). EPA finds that Wisconsin has met all applicable SIP requirements, for purposes of redesignation, under section 110 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). Additionally, EPA finds that all applicable requirements of the Wisconsin SIP for the area have been fully approved under section 110(k) of the CAA. In making these determinations, EPA ascertained which requirements are applicable for purposes of redesignation, and whether the required Wisconsin SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to these applicable requirements of the CAA.

The Calcagni memorandum<sup>5</sup> describes EPA's interpretation of which requirements are "applicable" for purposes of redesignation under section 107(d)(3)(E) of the CAA. Under this interpretation, a requirement is not "applicable" unless it was due prior to the state's submittal of a complete redesignation

---

<sup>5</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the "Calcagni memorandum")



request for the area. See also the Shapiro memorandum<sup>6</sup> and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7<sup>th</sup> Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Wisconsin has met all applicable requirements of section 110 and part D of the CAA applicable to the area for purposes of redesignation.
  - a. Section 110 General Requirements for Implementation Plans.

Section 110(a)(2) of the CAA outlines the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation

---

<sup>6</sup> "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993 ("the Shapiro memorandum")

of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, e.g., NO<sub>x</sub> SIP call, Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR). However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with the area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. See

65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426-27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated to attainment of the 2015 ozone NAAQS. The section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174-53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati, Ohio ozone redesignation 65 FR 37890 (June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation 66 FR 50399 (October 19, 2001).

We have reviewed Wisconsin's SIP and concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of

redesignation.<sup>7</sup>

b. Part D Requirements.

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The area was classified as Marginal under subpart 2 for the 2015 ozone NAAQS. Therefore, the area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the area is subject to the subpart 2 requirements contained in section 182(a) (Marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

i. Subpart 1 Section 172 Requirements.

CAA Section 172(b) requires states to submit SIPs meeting the requirements of section 172(c) no later than three years from the date of the nonattainment designation. For the area, the SIP provisions required under CAA section 172 were due August 3, 2021.

EPA previously approved Wisconsin's nonattainment NSR

---

<sup>7</sup> On September 14, 2018, Wisconsin submitted a SIP to meet the requirements of section 110 for the 2015 ozone NAAQS. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 2015 ozone NAAQS nonattainment status of the area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the State's 2015 ozone NAAQS redesignation request.

program on January 18, 1995 (60 FR 3538), and proposed an updated approval on January 19, 2022 (87 FR 2719). However, notwithstanding this approval, because PSD requirements will apply after redesignation, EPA has determined that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in the Nichols memorandum.<sup>8</sup> See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996). Wisconsin's PSD program will become effective in the area upon redesignation to attainment. EPA approved Wisconsin's PSD program on October 6, 2014 (79 FR 60064) and February 7, 2017 (82 FR 9515).

ii. Section 176 Conformity Requirements.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation

---

<sup>8</sup> "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment" Memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, October 14, 1994 ("the Nichols memorandum")

conformity), as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements<sup>9</sup> as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Wisconsin has an approved conformity SIP for the Door County area. *See* 79 FR 10995 (February 27, 2014).

iii. Inventory Requirement.

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS, including the ozone NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Ozone is a gas that is formed by the reaction

---

<sup>9</sup> CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of budgets, such as control strategy SIPs and maintenance plans.

of VOC and NO<sub>x</sub> in the atmosphere in the presence of sunlight (VOC and NO<sub>x</sub> are referred to as ozone precursors). Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO<sub>x</sub>. VOC is emitted by many types of pollution sources, including power plants, industrial sources, on-road and nonroad mobile sources, smaller stationary sources, collectively referred to as area sources, and biogenic sources. NO<sub>x</sub> is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission levels (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction targets needed to attain the NAAQS and to achieve reasonable further progress (RFP) toward attainment of the ozone standard (not required in the area considered here), determining emission inputs for ozone air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. As stated above, the CAA requires the states to submit emission inventories for areas designated as nonattainment for ozone. For the 2015 ozone NAAQS, EPA specifies that states submit ozone season day emission estimates for an inventory calendar year to be consistent with the baseline year for RFP plan as required by 40 CFR 51.1310(b). For the RFP baseline year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year

for the most recently available complete triennial (3-year cycle) emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area. (83 FR 63034 - 63035, December 6, 2018). States are required to submit estimates of VOC and NOx emissions for four general classes of anthropogenic sources: stationary point sources; area sources; on-road mobile sources; and nonroad mobile sources.

WDNR provided documentation of a 2014 NOx and VOC base year emissions inventory requirement for the area. WDNR selected 2014 because this was one of the three years of ozone data indicating a violation of the ozone standard that were used to designate the areas as nonattainment for the 2015 ozone NAAQS. 83 FR 25778, 25779. Tables 2 and 3 summarize the 2014 NOx and VOC emissions for the area in tons of emissions per ozone season day.

EPA has reviewed WDNR's requested SIP revision for consistency with sections 172(c)(3) CAA and 182(a)(1) of the CAA and with EPA's emission inventory requirements. In particular, EPA has reviewed the techniques used by WDNR to derive and quality assure the emission estimates. EPA has also considered whether Wisconsin has provided the public with the opportunity to review and comment on the development of the emission estimates, whether Wisconsin has confirmed that source facility emission statements are required for the 2015 ozone standard, and whether the State has addressed all public comments. WDNR



documented the procedures used to estimate the emissions for each of the major source types including running the latest version of the Motor Vehicle Emission Simulator model (MOVES3.0.2) for the on-road and nonroad emissions. The documentation of the emission estimation procedures is thorough and is adequate for EPA to determine that Wisconsin followed acceptable procedures to estimate the emissions. Accordingly, we conclude that Wisconsin has developed inventories of NO<sub>x</sub> and VOC emissions that are comprehensive and complete.

iv. Subpart 2 Section 182(a) Requirements.

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO<sub>x</sub> emitted within the boundaries of the ozone nonattainment area within two years of designation. The emissions inventory for the area, which was due August 3, 2020, is included in WDNR's recent redesignation request. EPA's analysis of the inventory is included above, and EPA proposes approval of this inventory as satisfying the 182(a)(1) inventory requirement.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The area is not subject to the section 182(a)(2)

RACT "fix up" requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and, in any case, Wisconsin complied with this requirement for the larger Door County area under the prior 1-hour ozone NAAQS. See 59 FR 41709 (August 15, 1994) and 60 FR 20643 (April 27, 1995).

Section 182(a)(2)(B) requires each state with a Marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or that was already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone NAAQS and the consideration of Wisconsin's redesignation request for this standard, the area is not subject to the section 182(a)(2)(B) requirement because the area was not required to have an I/M program prior to Nov. 15, 1990.

Section 182(a)(2)(C), under the heading "Corrections to the State Implementation Plans-Permit Programs" contains a requirement for states to submit NSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. For the purposes of the 2015 ozone NAAQS and the consideration of Wisconsin's redesignation request for this standard, the area is not subject to the section 182(a)(2)(C) requirement because as

mentioned previously EPA has determined that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR.

Section 182(a)(4) specifies the emission offset ratio for Marginal areas but does not establish a SIP submission deadline. EPA's December 6, 2018 implementation rule for the 2015 ozone NAAQS clarifies that nonattainment NSR permit program requirements applicable to the 2015 NAAQS are due three years from the effective date of the nonattainment designation. See 83 FR 62998, 63001. This approach is based on the provision in CAA section 172(b) requiring the submission of plans or plan revisions "no later than 3 years from the date of the nonattainment designation."

EPA proposed approval on January 19, 2022 (87 FR 2719) of Wisconsin's nonattainment NSR SIP revision to address the 2015 ozone NAAQS in this area. In addition, EPA approved Wisconsin's PSD program on October 6, 2014 (79 FR 60064) and February 7, 2017 (82 FR 9515). The State's PSD program will become effective in the area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NOx emissions. As discussed below in section IV.D.4. of this proposed rule, Wisconsin will continue to update its emissions inventory at

least once every three years. The emission statement requirement for the area was due August 3, 2020. EPA proposed on February 1, 2022 (87 FR 5438) to find that Wisconsin has satisfied the emissions statement requirement for Wisconsin nonattainment areas for the 2015 ozone NAAQS. Upon final rule, EPA would then affirm that EPA finds that the area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The area has a fully approved SIP for purposes of redesignation under section 110(k) of the CAA.

At various times, Wisconsin has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Wisconsin SIP for the area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (see the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989-990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein).

- C. *Are the air quality improvements in the area due to permanent and enforceable emission reductions?*

To redesignate an area from nonattainment to attainment, section 107(d) (3) (E) (iii) of the CAA requires EPA to determine

that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable emission reductions. EPA proposes to determine that Wisconsin has demonstrated that the observed ozone air quality improvement in the area is due to permanent and enforceable reductions in VOC and NOx emissions resulting from State measures adopted into the SIP and Federal measures.

In making this demonstration, the State has calculated the change in emissions between 2014 and 2019 in the area. Wisconsin also looked at ozone precursor emissions from the three major metro areas upwind of the area. For every metro area there was a net reduction in emissions (Tables 2-6). The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to Federal regulatory control measures (listed below) that Wisconsin and upwind states have implemented in recent years.<sup>10</sup> In addition,

---

<sup>10</sup> EPA designated the area as a Rural Transport Area (RTA), which means EPA determined that the NOx and VOC emissions from sources within the area do not make a significant contribution to ozone concentrations in the area itself, or in other areas. Therefore, it is reasonable to find that the permanent and enforceable precursor emissions reductions required for redesignation must be from areas outside the area within Wisconsin's control. The permanent and enforceable emissions reductions detailed in Wisconsin's redesignation request and discussed in this proposed action represent statewide reductions from Wisconsin and specifically from Wisconsin's Green Bay metropolitan area and Wisconsin's Milwaukee metropolitan area, both of which are upwind of the area, and which, therefore, have the potential to impact ozone levels in the area. Additionally, permanent and enforceable reductions from Chicago, a multi-state metropolitan area upwind of the area, are listed. The Chicago metropolitan area generally consists of portions of Wisconsin, Illinois, and Indiana. For its upwind emissions reduction analysis for the Chicago metropolitan area, Wisconsin included: Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will Counties in Illinois; Jasper, Lake, Porter and Newton Counties in Indiana, and Kenosha County, Wisconsin.

Wisconsin provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. More details and EPA's assessment of this analysis are provided in Section 3 Meteorology. Based on the information summarized below, EPA proposes to find that Wisconsin has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and enforceable emission controls implemented.

a. Regional NO<sub>x</sub> Controls.

*CAIR/CSAPR*. Under the "good neighbor provision" of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published *CAIR*, which required eastern states, including Wisconsin, to prohibit emissions consistent with annual and ozone season NO<sub>x</sub> budgets and annual sulfur dioxide (SO<sub>2</sub>) budgets (70 FR 25152). *CAIR* addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter (PM<sub>2.5</sub>) NAAQS and was designed to mitigate the impact of transported NO<sub>x</sub> emissions, a precursor of both ozone and PM<sub>2.5</sub>, as well as transported SO<sub>2</sub> emissions, another precursor of PM<sub>2.5</sub>. The D.C. Circuit remanded *CAIR* to EPA for replacement in 2008. *North Carolina v. EPA*, 531 F.3d 896,

*modified*, 550 F.3d 1176 (2008). While EPA worked on developing a replacement rule, implementation of the CAIR program continued as planned with the NOx annual and ozone season programs beginning in 2009 and the SO2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM2.5 NAAQS, and the 2006 PM2.5 NAAQS.<sup>11</sup> Through Federal Implementation Plans (FIPs), CSAPR required electric generating units (EGUs) in eastern states, including Wisconsin, to meet annual and ozone season NOx budgets and annual SO2 budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NOx trading program for EGUs in eastern states, including Wisconsin, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update is projected to result in a 20% reduction in ozone season NOx emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. On April 30, 2021, EPA published the Revised CSAPR Update, which fully resolved the obligations of eastern states, including Illinois and Indiana (which are upwind of the area), under the good neighbor

---

<sup>11</sup> In a December 27, 2011, rulemaking, EPA included Wisconsin in the ozone season NOx program, addressing the 1997 ozone NAAQS (76 FR 80760).

provision for the 2008 ozone NAAQS (82 FR 23054). The Revised CSAPR Update is estimated to reduce ozone season NOx emissions from EGUs by 17,000 tons beginning in 2021, compared to emissions without the rule. The reduction in NOx emissions from the implementation of CAIR and then CSAPR occurred during the attainment years, and additional emission reductions will occur throughout the maintenance period.

b. Federal Emission Control Measures.

Reductions in VOC and NOx emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following:

*Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards.* On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule was phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NOx and for particulate matter (PM). The VOC and NOx tailpipe standards for light-duty vehicles represent approximately an 80% reduction from previous fleet average and a 70% reduction in per-vehicle PM standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NOx and per-vehicle PM standards. The evaporative emissions requirements in the rule are projected to result in



approximately a 50% reduction from previous standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm starting in January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

*Heavy-Duty Diesel Engine Rules.* In July 2000, EPA issued a rule for on-road heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO<sub>x</sub>, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 ppm by 2007, leading to additional reductions in combustion NO<sub>x</sub> and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO<sub>x</sub> and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that by 2030 NO<sub>x</sub> and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the area, some of these emission reductions occurred during the attainment years and additional emission reductions will occur throughout the

maintenance period, as older vehicles are replaced with newer, compliant model years.

*Nonroad Diesel Rule.* On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The sulfur limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO<sub>x</sub> emissions from these nonroad diesel engines by approximately 90%. As projected by these estimates and demonstrated in the nonroad emission modeling for the area, some of these emission reductions occurred during the attainment years and additional emission reductions will occur throughout the maintenance period.

*Nonroad Spark-Ignition Engines and Recreational Engine Standards.* On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in VOC emissions from these

engines and an 80% reduction in NOx emissions. As projected by these estimates and demonstrated in the nonroad emission modeling for the area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

*Category 3 Marine Diesel Engine Standards.* On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards have applied beginning in 2011 and are expected to result in a 15 to 25% reduction in NOx emissions from these engines. Final Tier 3 emission standards have applied beginning in 2016 and are expected to result in approximately an 80% reduction in NOx from these engines. As projected by these estimates and demonstrated in the nonroad emission modeling for the area, some of these emission reductions occurred during the attainment years and additional emission reductions will occur throughout the maintenance period.

## 2. Emission reductions.

Wisconsin calculated the change in emissions between 2014 and 2019 in the area and three major metro areas upwind of the area. For every metro area there was a net reduction in emissions (Tables 2-6). The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to the Federal regulatory control measures (listed above). Wisconsin is using a 2014 emissions inventory

as the nonattainment year. This is appropriate because it was one of the years used to designate the area as nonattainment. Wisconsin is using 2019 as the attainment year, which is appropriate because it is one of the years in the 2019-2021 period used to demonstrate attainment.

As mentioned previously, EPA designated the area as an RTA. Therefore, the permanent and enforceable precursor emissions reductions required for redesignation must be inclusive of areas outside the RTA within Wisconsin's control. The permanent and enforceable emissions reductions discussed in this proposed action represent statewide reductions from Wisconsin and specifically from Wisconsin's Green Bay metropolitan area<sup>12</sup> and Wisconsin's Milwaukee metropolitan area<sup>13</sup>, both of which are upwind of the area and in line with general wind patterns on exceedance days,<sup>14</sup> and which, therefore, have the potential to impact ozone levels in the area. Additionally, permanent and enforceable reductions from Chicago, a multi-state metropolitan area<sup>15</sup> upwind of the area, are listed. In developing the emissions inventory information for these upwind metropolitan areas for the year 2014, Wisconsin generally used the 2014

---

<sup>12</sup> For its upwind emissions reduction analysis for the Green Bay metropolitan area, Wisconsin included Brown County, WI.

<sup>13</sup> For its upwind emissions reduction analysis for the Milwaukee metropolitan area, Wisconsin included: Ozaukee, Racine, Waukesha and Washington Counties in Wisconsin.

<sup>14</sup> See the Technical Support Document for Wisconsin for the 2015 Ozone NAAQS for Counties Remanded to EPA at [https://www.epa.gov/sites/default/files/2021-05/documents/wi\\_tsd\\_remand\\_final.pdf](https://www.epa.gov/sites/default/files/2021-05/documents/wi_tsd_remand_final.pdf)

<sup>15</sup> The Chicago metropolitan area generally consists of portions of Wisconsin, Illinois, and Indiana. For its upwind emissions reduction analysis for the Chicago metropolitan area, Wisconsin included: Cook, Dekalb, DuPage, Grundy, Kane, Kendall, Lake McHenry and Will Counties in Illinois; Jasper, Lake, Porter and Newton Counties in Indiana, and Kenosha County, Wisconsin.

National Emissions Inventory (NEI) version 2 and the 2014 National Air Toxics Assessment (NATA) for point, area, on-road, and nonroad sources. For 2019 emissions, Wisconsin interpolated between the 2016 and 2023 emissions of EPA's 2016 version 1 emissions modeling platform. On-road and nonroad emissions in Door County were modeled using MOVES3.

The emissions data that Wisconsin used were available in units of tons per year. Wisconsin expects summer day emissions to be slightly higher relative to the rest of the year due to increases in vehicle miles traveled (VMT) and nonroad activity. Therefore, Wisconsin calculated tons per summer day (tpsd) by dividing annual emissions for mobile source sectors by 330 rather than 365 days to avoid underestimating mobile source sector emissions. For the purpose of estimating regional emissions trends from areas upwind of the nonattainment area, Wisconsin assumed point and area source facilities operate steadily over 365 days each year. Therefore, Wisconsin estimated 2014 and 2019 summer day emissions by dividing the annual emissions for the point and area sectors by 365 days. EPA proposes to find Wisconsin's methods to be reasonable given Wisconsin's assumptions regarding emissions activity from the various source sectors.

Using the inventories described above, Wisconsin documents changes in VOC and NO<sub>x</sub> emissions from 2014 to 2019 for the area as well as for the upwind metropolitan areas described above, including the Green Bay area, the Milwaukee area, and the

Chicago area. Emissions data are shown in Tables 2 through 6.

As shown in Table 6, overall NOx and VOC emissions declined between 2014 and 2019.

**Table 2. NOx emissions for nonattainment year 2014 (TPSD).**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.20	3.32	0.87	4.39
Green Bay area	15.57	2.63	4.05	11.20	33.45
Milwaukee area	21.06	17.87	28.19	57.74	124.86
Chicago area	156.24	96.68	158.24	311.75	722.91

**Table 3. VOC emissions for nonattainment year 2014 (TPSD).**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.21	0.74	3.38	0.29	4.62
Green Bay area	4.27	8.71	2.91	6.31	22.20
Milwaukee area	9.40	50.40	18.77	31.07	109.64
Chicago area	50.20	240.36	91.62	170.29	552.47

**Table 4. NOx emissions for attainment year 2019 (TPSD).**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.20	2.99	0.61	3.80
Green Bay area	6.30	2.60	2.58	6.49	17.97
Milwaukee area	17.39	17.66	16.49	29.15	80.69
Chicago area	117.05	95.23	131.72	171.02	515.02

**Table 5. VOC emissions for attainment year 2019 (TPSD).**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.13	0.74	2.28	0.22	3.37
Green Bay area	4.54	9.01	1.64	3.78	18.97
Milwaukee area	9.41	50.81	11.51	16.42	88.15
Chicago area	47.73	242.83	68.78	99.75	459.09

**Table 6. Change in NOx and VOC emissions between 2014 and 2019 (TPSD).**

	NOx			VOC		
	2014	2019	Net Change (2014-2019)	2014	2019	Net Change (2014-2019)
<b>Door County (partial)</b>						
Point	0.00	0.00	0.00	0.21	0.13	0.08
Area	0.20	0.20	0.00	0.74	0.74	0.00
Nonroad	3.32	2.99	0.33	3.38	2.28	1.10
On-road	0.87	0.61	0.26	0.29	0.22	0.07
Total	4.39	3.80	0.59	4.62	3.37	1.25
<b>Green Bay Area (Brown County only)</b>						
Point	15.57	6.30	9.27	4.28	4.54	-0.26
Area	2.63	2.60	0.03	8.71	9.01	-0.30
Nonroad	4.05	2.58	1.47	2.91	1.64	1.27
On-road	11.20	6.49	4.71	6.31	3.78	2.53
Total	33.45	17.97	15.48	22.21	18.97	3.24

<b>Milwaukee Area</b>						
Point	21.06	17.39	3.67	9.40	9.41	-0.01
Area	17.87	17.66	0.21	50.40	50.81	-0.41
Nonroad	28.19	16.49	11.70	18.77	11.51	7.26
On-road	57.74	29.15	28.59	31.07	16.42	14.65
Total	124.86	98.07	26.79	109.64	97.57	12.07
<b>Chicago Area</b>						
Point	156.24	117.05	39.19	50.20	47.73	2.47
Area	96.68	95.23	1.45	240.36	242.83	-2.47
Nonroad	158.24	131.72	26.52	91.62	68.78	22.84
On-road	311.75	171.02	140.73	170.29	99.75	70.54
Total	722.92	632.06	90.86	552.47	506.84	45.63

### 3. Meteorology.

Wisconsin included an analysis to further support its demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved is due to permanent and enforceable emission reductions and not unusually favorable meteorology. Ozone formation is a complex process with atmospheric chemical reactions involving NO<sub>x</sub> and VOC precursor species. Summertime ozone formation tends to be positively correlated with temperature and can be influenced by other meteorological factors such as wind speed, wind direction, and precipitation. Wisconsin examined the factors influencing high ozone at the Door County monitor from 2005-2020, isolated days with meteorological factors favorable to ozone detected at Door County from 2005-2020 and plotted the temporal trend in ozone on these days during this time period from 2005-2020. Wisconsin's analysis grouped days with similar meteorology which normalizes the influence of meteorological variability on the underlying trend in ozone concentrations. Therefore, the remaining trend in ozone concentrations can be inferred to be due to trends in non-meteorological predictors, such as

reductions in precursor emissions. As such, Wisconsin's analysis suggests that the observed long-term decreases in ozone concentrations including the more recent nonattainment to attainment year ozone concentrations are due to the permanent and enforceable reductions in ozone precursor emissions discussed earlier, rather than from meteorological factors. EPA finds the analysis to be a useful tool here in showing that air quality was not due to unusually favorable meteorology. Therefore, EPA finds that Wisconsin has shown that the air quality improvements in the area are due to permanent and enforceable emissions reductions and not unusually favorable meteorology.

*D. Does Wisconsin have a fully approvable ozone maintenance plan for the area?*

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10-year



maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the area to attainment for the 2015 ozone NAAQS, Wisconsin submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Wisconsin's ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Wisconsin SIP.

1. Attainment inventory.

EPA is proposing to determine that the area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2019-2021. Wisconsin selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO<sub>x</sub>. Attainment emissions inventories identify the levels of emissions in the nonattainment area that are sufficient to attain the NAAQS. As mentioned previously, EPA designated the

area as an RTA. As such, Wisconsin included an attainment emissions inventory for the nonattainment area and additionally provided information about attainment year emissions for upwind metropolitan areas that have the potential to influence ozone levels in the RTA. The derivation of the attainment year emissions for these areas is discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5, above.

2. Has the state documented maintenance of the ozone standard in the area?

Wisconsin has demonstrated maintenance of the 2015 ozone NAAQS through 2035 by projecting that current and future emissions of VOC and NO<sub>x</sub> for the area remain at or below attainment year emission levels and, additionally, that upwind areas within Wisconsin's control having the potential to influence ozone levels in the area, including the Green Bay metropolitan area, the Milwaukee metropolitan area, and the Chicago metropolitan area, a portion of which is within Wisconsin, remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099-53100 (October 19, 2001), 68 FR 25413, 25430-25432 (May 12, 2003).

Wisconsin is using emissions inventories for the years 2030 and 2035 to demonstrate maintenance. 2035 is more than 10 years

after the expected effective date of the redesignation to attainment, and 2030 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

Wisconsin generally used EPA's 2016 Emissions Modeling Platform, Version 1, which includes base year 2016 emissions and emissions projections for the years 2023 and 2028. Wisconsin estimated 2030 and 2035 emissions by linearly extrapolating EPA's 2023 and 2028 emissions projections. Wisconsin used the same methodology to convert annual tons to tpsd for the 2030 and 2035 emissions projections as it used for the 2014 and 2019 inventory estimates. Thus, Wisconsin derived 2030 and 2035 summer day emissions by dividing the annual emissions for the point and area sectors by 365 days and the mobile sectors by 330. Interim and future year emissions estimates are shown in Tables 7 through 11 below. Specifically for Door County, Wisconsin ran MOVES3 for on-road emissions in both 2030 and 2035 for Door County.

**Table 7. NOx emissions for interim maintenance year 2030 (TPSD)**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.19	2.18	0.30	2.67
Green Bay area	5.61	2.56	1.48	1.86	11.51
Milwaukee area	17.90	17.11	13.31	10.17	58.49
Chicago area	101.84	89.52	113.96	69.03	374.35

**Table 8. VOC emissions for interim maintenance year 2030 (TPSD)**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.18	0.74	1.37	0.13	2.42
Green Bay area	4.55	9.38	1.41	1.97	17.31
Milwaukee area	9.75	51.43	10.82	8.68	80.68
Chicago area	46.45	249.38	66.68	49.96	412.47

**Table 9. NOx emissions for maintenance year 2035 (TPSD)**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.00	0.19	2.16	0.26	2.61
Green Bay area	5.64	2.54	1.00	0.46	9.64
Milwaukee area	17.78	16.89	12.58	4.94	52.19
Chicago area	102.13	86.83	110.87	40.91	340.74

**Table 10. VOC emissions for maintenance year 2035 (TPSD)**

Area	Point	Area	Nonroad	On-road	Total
Door County (partial)	0.18	0.75	1.28	0.12	2.33
Green Bay area	4.56	9.54	1.35	1.43	16.88
Milwaukee area	9.73	51.70	10.79	6.20	78.42
Chicago area	46.23	252.30	67.68	33.82	400.03

**Table 11. Change in NOx and VOC emissions between 2019 and 2035 (TPSD)**

	NOx				VOC			
	2019	2030	2035	Net Change (2019-2035)	2019	2030	2035	Net Change (2019-2035)
<b>Door County (partial)</b>								
Point	0.00	0.00	0.00	0.00	0.13	0.18	0.18	-0.05
Area	0.20	0.19	0.19	0.01	0.74	0.74	0.75	-0.01
Nonroad	2.99	2.18	2.16	0.83	2.28	1.37	1.28	1.00
On-road	0.61	0.30	0.26	0.35	0.22	0.13	0.12	0.10
Total	3.80	2.67	2.61	1.19	3.37	2.42	2.33	1.04
<b>Green Bay Area (Brown County only)</b>								
Point	6.30	5.61	5.64	0.66	4.54	4.55	4.56	-0.02
Area	2.60	2.56	2.54	0.06	9.01	9.38	9.54	-0.53
Nonroad	2.58	1.48	1.00	1.58	1.64	1.41	1.35	0.29
On-road	6.49	1.86	0.46	6.03	3.78	1.97	1.43	2.35
Total	17.97	11.51	9.64	8.33	18.97	17.31	16.88	2.09
<b>Milwaukee Area</b>								
Point	17.39	17.90	17.78	-0.39	9.41	9.75	9.73	-0.32
Area	17.66	17.11	16.89	0.77	50.81	51.43	51.70	-0.89
Nonroad	16.49	13.31	12.58	3.91	11.51	10.82	10.79	0.72
On-road	29.15	10.17	4.94	24.21	16.42	8.68	6.20	10.22
Total	80.69	58.49	52.19	28.50	88.15	80.68	78.42	9.73
<b>Chicago Area</b>								
Point	117.05	101.84	102.13	14.92	47.73	46.45	46.23	1.50
Area	95.23	89.52	86.83	8.40	242.83	249.38	252.30	-9.47
Nonroad	131.72	113.96	110.87	20.85	68.78	66.68	67.68	1.10
On-road	171.02	69.03	40.91	130.11	99.75	49.96	33.82	65.93
Total	515.02	374.35	340.74	174.28	459.09	412.47	400.03	59.06

In summary, Wisconsin's maintenance demonstration for the area shows maintenance of the 2015 ozone NAAQS by providing emissions information to support the demonstration that future emissions of NOx and VOC will remain at or below 2019 emission

levels when taking into account both future source growth and implementation of future controls. Table 11 shows NOx and VOC emissions are projected to decrease between 2019 and 2035.

In addition, EPA has recently conducted updated air quality modeling of the contiguous United States, projecting ozone concentrations at all air quality monitors in 2023, 2026, and 2032.<sup>16</sup> That modeling incorporates the most recent updates to emissions inventories, including on-the-books emissions reductions, and meteorology. This modeling indicates that EPA does not project Door County to be in nonattainment of the 2015 ozone NAAQS, nor does the Agency expect the area to struggle with maintenance, in those modeled future years. We propose to find that EPA's ozone transport air quality modeling further supports Wisconsin's demonstration that the Door County area will continue to maintain the 2015 ozone NAAQS.

### 3. Continued air quality monitoring.

Wisconsin has committed to continue to operate the ozone monitor listed in Table 1 above. Wisconsin has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Wisconsin remains obligated to meet monitoring requirements and to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

### 4. Verification of continued attainment.

---

<sup>16</sup> Available at <https://www.epa.gov/air-emissions-modeling/2016v2-platform>.

Wisconsin has confirmed that it has the legal authority to enforce and implement the requirements of the maintenance plan for the area. This includes the authority to adopt, implement, and enforce any subsequent statewide and/or area-specific emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of relevant emissions inventories. Wisconsin will continue to operate the current ozone monitor in Door County. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

To track future levels of emissions, Wisconsin will continue to develop and submit to EPA updated emission inventories for the area and upwind areas in Wisconsin at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Wisconsin was compiled for 2017, and 2020 is in progress. Point source facilities covered by Wisconsin's emission statement rule, Chapter NR 438 of the Wisconsin Administrative Code, will

continue to submit VOC and NOx emissions on an annual basis.

5. What is the contingency plan for the area?

Section 175A of the CAA requires the state to adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: the contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Wisconsin has adopted a maintenance plan for the area to address possible future ozone air quality problems. The maintenance plan adopted by Wisconsin has two levels of response, a warning level response and an action level response.

In Wisconsin's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.070 ppm or higher is monitored within the maintenance area. A

warning level response will consist of Wisconsin conducting a study to determine whether the ozone value indicates a trend toward higher ozone values and whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will be completed no later than May 1<sup>st</sup> of the year after the ozone season in which the exceedance is detected.

In Wisconsin's plan, a violation of the 2015 ozone NAAQS within the maintenance area triggers an action level response. When an action level response is triggered, Wisconsin will determine what additional control measures are needed to ensure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. Wisconsin may also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute an adequate contingency measure response.

Wisconsin included the following list of potential contingency measures in its maintenance plan:

1. Anti-idling control program for mobile sources, targeting diesel vehicles;
2. Diesel exhaust retrofits;
3. Traffic flow improvements;
4. Park and ride facilities;



5. Rideshare/carpool program; and

6. Expansion of the vehicle emissions testing program.

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that Wisconsin's maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, Wisconsin has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Wisconsin for the area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Wisconsin SIP.

**V. Has the state adopted approvable motor vehicle emission budgets?**

*A. Motor Vehicle Emission Budgets*

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (*i.e.*, be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing air quality

problems, or delay timely attainment of the NAAQS or any required interim emission reductions or other milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. (See 40 CFR 93.102(b).) Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment and are required to develop a CAA section 175A maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. See the SIP requirements for the 2015 ozone NAAQS in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include budgets for criteria pollutants, including ozone, and their precursor pollutants (VOC and NOx for ozone) to address pollution from on-road transportation sources. The budgets are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. See 40 CFR 93.101.

Under 40 CFR part 93, a budget for an area seeking a

redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt budgets for other years as well. The budgets serve as a ceiling on emissions from an area's planned transportation system. The budgets concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the budgets in the SIP and how to revise the budgets, if needed, subsequent to initially establishing budgets in the SIP.

*B. What is the status of EPA's adequacy determination for the proposed VOC and NOx budgets for the area?*

When reviewing submitted control strategy SIPs or maintenance plans containing budgets, EPA must affirmatively find that the budgets contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted budgets are adequate for transportation purposes, the budgets must be used by state and Federal agencies in determining whether transportation plans, transportation improvement programs and, in the case of isolated rural areas, proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.<sup>17</sup>

EPA's substantive criteria for determining adequacy of a

---

<sup>17</sup> The transportation conformity rule defines isolated rural nonattainment and maintenance areas as areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have Federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas. (See 40 CFR 93.101.) Door County is an isolated rural area for transportation conformity purposes.

budgets are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004).

As discussed earlier, Wisconsin's maintenance plan includes NOx and VOC budgets for the area for 2035 and 2030, the last year of the maintenance period and an interim year, respectively. EPA has reviewed Wisconsin's VOC and NOx budgets for the area and, in this action, is proposing to approve them. We are also starting the adequacy review process for these budgets. Wisconsin's January 5, 2022 maintenance plan SIP submission, including the VOC and NOx budgets for the area, is available for public comment via this proposed rulemaking. The submitted maintenance plan, which includes the budgets, was endorsed by the Governor's designee and was subject to a state public hearing. The budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The budgets were clearly identified and precisely quantified using the following methodology. To accurately identify future on-road emissions, WDNR grew VMT from

2019 using growth rates provided by the Wisconsin Department of Transportation for two general classes of vehicles (automobiles and trucks). After growing the VMT for these two general classes, WDNR allocated the VMT to vehicle sub-classes based on the MOVES3 default VMT splits by vehicle class for Door County for 2030 and 2035. To account for additional driving during the summer, WDNR developed adjustment factors using data averaged over a 10-year period to convert the annual VMT (divided by 365) to ozone season weekday VMT. These budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

**Table 12. Budgets for the area (TPSD).**

	Attainment Year 2019 On-road Emissions	2030 Estimated On-road Emissions	2030 Mobile Safety Margin Allocation	2030 budgets	2035 Estimated On-road Emissions	2035 Mobile Safety Margin Allocation	2035 budgets
VOC	0.2235	0.1173	15%	0.1349	0.1003	15%	0.1153
NOx	0.6141	0.2604	15%	0.2995	0.2248	15%	0.2586

As shown in Table 12, the 2030 and 2035 budgets exceed the estimated 2030 and 2035 on-road sector emissions. To accommodate future variations in VMT in the area, Wisconsin allocated a portion of the safety margin (described further below) to the mobile sector.<sup>18</sup> Wisconsin has demonstrated that with mobile source emissions at or below 0.1349 TPSD and 0.1153 TPSD of VOC and 0.2995 TPSD and 0.2586 TPSD of NOx in 2030 and 2035, respectively, including partial allocation of the safety margin, emissions are projected to remain under attainment year

<sup>18</sup> Allocation of a safety margin to an area's motor vehicle emissions budgets is provided for by the transportation conformity rule. (See 40 CFR 93.124(a).)

emission levels. EPA is proposing to approve the budgets for use to determine transportation conformity in the area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the budgets in conjunction with the levels of the projected emissions inventories for the upwind areas discussed above.

*C. What is a safety margin?*

A "safety margin" is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for maintenance. 40 CFR 93.101. As noted in Table 11, the emissions in the area are projected to have safety margins of 0.35 TPSD for NO<sub>x</sub> and 0.10 TPSD for VOC in 2035 (the difference between the attainment year, 2019, emissions and the projected 2035 emissions for all sources in the area).

Similarly, there is a safety margin of 0.31 TPSD for NO<sub>x</sub> and 0.09 TPSD for VOC in 2030. Even if emissions exceeded projected levels by the full amount of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 12 above, Wisconsin is allocating a portion of that safety margin to the on-road mobile source sector. Specifically, in 2030, Wisconsin is allocating 15% or 0.0176 TPSD and 0.0391 TPSD of the VOC and NO<sub>x</sub> safety margins, respectively. In 2035, Wisconsin is allocating 15% or 0.0150

TPSD and 0.0338 TPSD of the VOC and NOx safety margins, respectively. Wisconsin is not requesting allocation to the budgets of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the budgets represents only a small portion of the 2030 and 2035 safety margins. Therefore, even though the state is requesting budgets that exceed the projected on-road mobile source emissions for 2030 and 2035 contained in the demonstration of maintenance, the permissible level of on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Once allocated to on-road mobile sources, these safety margins will not be available for use by other sources. Further, the area is an RTA. Therefore, in addition to the budgets, the estimated upwind emissions reductions throughout the maintenance period, which are described above, are also important for maintaining the 2015 ozone NAAQS in the area throughout the 10-year maintenance period.

## **VI. Proposed actions.**

EPA is proposing to change the legal designation of the revised Door County (partial) area from nonattainment to attainment for the 2015 ozone NAAQS. Additionally, EPA is proposing approval of the emissions inventory for this area, which is a prerequisite to finalizing the redesignation. EPA is also proposing to approve, as a revision to the Wisconsin SIP,

the State's maintenance plan for the area. The maintenance plan is designed to keep the area in attainment of the 2015 ozone NAAQS through 2035. Finally, EPA is proposing to approve the newly established 2030 and 2035 budgets for the area and initiating the adequacy process for these budgets.

## **VII. Statutory and executive order reviews.**

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, the proposed actions to approve Wisconsin's SIP Submissions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders



12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR

7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

##### *40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 24, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*